COURT OF APPEALS
DECISION
DATED AND FILED

January 14, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1492 **Cir. Ct. No. 94FA001117**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE MARRIAGE OF:

DANA K. PEPPIN N/K/A DANA K. KILLION,

PETITIONER-RESPONDENT,

V.

FERRIN J. PEPPIN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Affirmed*.

Before Anderson, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. Ferrin J. Peppin appeals from an order dismissing his motion to clarify and modify child support. The circuit court concluded that the Ohio court, and not the Wisconsin court, is the appropriate forum to address

child support issues. We conclude that because child support is intertwined with custody and placement decisions, the parties' marital settlement agreement (MSA) compels the conclusion that Wisconsin is no longer the appropriate forum. We affirm the circuit court's order.

¶2 Ferrin and Dana K. Peppin were divorced in 1995. The parties commenced the action while living in Wisconsin but were living in Florida when the divorce was finalized. Their MSA was made part of the judgment of divorce. It provides for shared placement of the parties' two minor children and sets child support. Child support is paid through the Dane County Clerk of Courts. The agreement also provides:

> The forum for any dispute arising out of this Marital Settlement Agreement and divorce action shall be the State of Wisconsin, unless the parties otherwise agree in writing or unless the State of Wisconsin is deemed under its own laws to have lost jurisdiction over the issues related to custody and placement.

¶3 In 1996, the parties filed a stipulation to amend the judgment of divorce and permit the relocation of the children to Columbus, Ohio. Since 1996, Ferrin, Dana and the children have lived in Ohio. In 2001, the parties filed competing motions for modification of the allocation parental rights and responsibilities in an Ohio court. The motions were mutually dismissed. In 2002, competing motions for contempt with respect to the disclosure of certain information were filed in the Ohio action.

¶4 In January 2003, Ferrin filed in this Wisconsin action a motion to clarify and modify the child support provision of the divorce judgment. Dana responded with a motion to dismiss Ferrin's motion on the ground that the parties

reside in Ohio and Ohio litigation is pending.[1] The circuit court granted Dana's motion.

¶5 We first turn to the choice of forum clause in the MSA. Ferrin argues that the clause was intended to keep child support matters in the Wisconsin court because it only refers to the loss of Wisconsin jurisdiction by operation of law over "custody and placement" issues.[2] He points to other financial aspects of the MSA retaining links to the Wisconsin court.[3] We conclude the MSA cannot be construed in such a limited fashion.

¶6 The construction of a contract is a legal question that we decide independently of the circuit court's determination. ***Antuk v. Antuk***, 130 Wis. 2d 340, 343-44, 387 N.W.2d 80 (Ct. App. 1986). The words used should be interpreted reasonably to avoid an absurd result. *See* ***WXIX, Inc. v. Scott Heating & Air Conditioning Co.***, 38 Wis. 2d 278, 282, 156 N.W.2d 451 (1968); ***Western Casualty & Surety Co. v. Budrus***, 112 Wis. 2d 348, 351, 332 N.W.2d 837 (Ct. App. 1983). Child support is inextricably dependent on custody and placement determinations. Whenever a change in custody or placement is made, a corresponding change in child support may result. It would be an absurd result to

[1] After Ferrin filed his motion, Dana filed a motion in the Ohio action for modification of child support. The Ohio proceeding has been continued pending the outcome in the Wisconsin proceeding.

[2] Ferrin acknowledges that Wisconsin may no longer have jurisdiction over custody and placement under WIS. STAT. ch. 822 (2001-02), the Uniform Child Custody Jurisdiction Act. He does not argue that Wisconsin retains jurisdiction regarding custody. Such a claim would lack merit since Wisconsin is no longer the children's "home state." WIS. STAT. § 822.02(5). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

[3] He cites the fact that an annual disbursing fee and the wage assignment is paid to the Dane County Clerk of Courts and that each party is required to notify the clerk of any change of employer, income or address.

have the court of one state make a custody and placement determination under the standards applicable in that state and have the court of a different state make the child support determination under potentially different standards. The financial aspect of custody and placement cannot be separated from those determinations. The only reasonable reading of the MSA is that if by operation of its own laws, Wisconsin loses jurisdiction over the issues related to custody and placement, it loses jurisdiction over child support as well.[4]

¶7 The next issue is whether, as stated in the MSA, "the State of Wisconsin is deemed under its own laws to have lost jurisdiction over the issues related to custody and placement." The real issue is whether the Dane County circuit court has competency to proceed. *See* ***Cepukenas v. Cepukenas***, 221 Wis. 2d 166, 170, 584 N.W.2d 227 (Ct. App. 1998). Inasmuch as Ferrin does not contest that Wisconsin no longer qualifies as the children's "home state" and has no authority to act under the Uniform Child Custody Jurisdiction Act, WIS. STAT. ch. 822, regarding custody or placement, we need not dwell long on the issue. It does not matter that Ohio has not yet exercised its jurisdiction to modify custody or placement. If modification is pursued, Wisconsin would not have jurisdiction to act. It follows that Wisconsin does not have jurisdiction to act with respect to child support.

[4] Other portions of the MSA recognize the possibility that jurisdiction over placement, and consequently child support, would be transferred to Florida. The parties agreed to use the Florida equivalent of mediation if jurisdiction over placement transferred to Florida and they were unable to agree on physical placement. They agreed not to violate any Florida statute regarding removal of the children from Florida. They agreed not to seek modification of child support in a Florida court for a period of one year.

¶8 As the circuit court concluded, the application of WIS. STAT. §§ 767.025(2)(a) and 769.205(1) yields the same result. Section 767.025(2)(a) provides that a motion to modify child support shall be filed in the county in which the original judgment was rendered unless all parties stipulate to proceedings in another county, or the original county orders the modification motion to be heard in another county. However, this provision is initially qualified by the phrase, "[e]xcept as provided in ch. 769."[5] Chapter 769 is the Uniform Interstate Family Support Act. Section 769.205(1) provides:

> A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order for as long as this state remains the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued, or until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

¶9 Ferrin, Dana and the children do not reside in Wisconsin. Thus Wisconsin does not have continuing and exclusive jurisdiction simply by virtue of the original child support order. Wisconsin has lost continuing and exclusive jurisdiction. Wisconsin ceases to be the forum of choice by operation of the MSA.

¶10 Ferrin's assertion that WIS. STAT. § 769.207(2)[6] trumps WIS. STAT. § 769.205(2) is unavailing. Section 769.207(2) references § 769.205 and requires

[5] We reject Ferrin's argument that WIS. STAT. § 767.025(2) is the more specific statute and WIS. STAT. § 769.205 the more general. The qualifying language renders § 767.025(2) subordinate to § 769.205.

[6] WIS. STAT. § 769.207(2) provides: "The tribunal that issued the order that is controlling and must be recognized under sub. (1c), (1m) or (1r) is the tribunal that has continuing, exclusive jurisdiction in accordance with s. 769.205."

the exercise of continuing and exclusive jurisdiction in accordance with that provision.

¶11 Finally, to the extent there may be any room for the Wisconsin court to proceed on the motion for clarification of child support,[7] the circuit court properly exercised its discretion in deferring to the Ohio court as a matter of comity. *See* ***Daniel-Nordin v. Nordin***, 173 Wis. 2d 635, 651, 495 N.W.2d 318 (1993). Simply put, this case need not be complicated by interstate proceedings. All concerned parties, children included, reside in Ohio and have for several years. "The state court having the better access to the relevant factual information would appear to be the court that should retain jurisdiction." ***Id.*** at 652. The payment information needed from Wisconsin is easily ascertained and forwarded. Any ambiguity with respect to the MSA can be resolved by Ohio courts since the question is one of intent of the parties and not the intent of the Wisconsin court. All issues between the parties should be heard in the Ohio court.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[7] Ferrin argues for the first time on appeal that pursuant to WIS. STAT. § 769.205(3), the Wisconsin court may enforce the child support order as to amounts accruing before modification by the tribunal of another state or provide relief from the original order before the effective date of any modification. The condition precedent for application of § 769.205(3) has not been satisfied. That section comes into play only after a child support order of this state has been modified by the tribunal of another state. Ohio has not yet modified the order.